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No. 82-1149

IN THE

Supreme Court of the United States

October Term, 1982

ALONZO MARQUEZ,
Petitioner,

vs.

UNIVERSITY OF WASHINGTON; JOHN HOGNESS, President of the University of Washington; RICHARD RODDIS, Dean of the School of Law; and BOARD OF REGENTS OF THE UNIVERSITY OF WASHINGTON,

Respondents

ON PETITION FOR A WRIT OF CERTIORARI TO THE COURT
OF APPEALS FOR THE
STATE OF WASHINGTON

RESPONDENTS' BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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The respondents, University of Washington, et al., respectfully request that this court deny the petition for writ of certiorari seeking review of the opinion of the Court of Appeals for the State of Washington in this case. That opinion is reported at 32 Wn.App. 302.

STATEMENT OF THE CASE

Judge Gerard M. Shellan of the Superior Court of the State of Washington for King County summarized the facts in his memorandum opinion granting respondents' motion for summary judgment of dismissal. We adopt them as follows:

Petitioner, Alonzo Marquez, a member of a minority group, was admitted to the respondent University of Washington's law school as a special admittee under its affirmative action program and enrolled in the fall quarter 1972. At the end of Marquez' first year, his cumulative grade average was 63.94, equivalent to a D average and substantially below the 68 average which students must earn in order to continue law school. During said first year petitioner Marquez had received failing grades (below 60) in contracts, civil procedure and property I, in addition to which Marquez withdrew from two other courses.

Prior to the 1972 school year, the University of Washington's Law School had rated all applicants using a combination of their scores on LSAT (Law School Aptitude Test) and their undergraduate grades. Such a rating is known as the "predicted first year average." Marquez' PFYA was 66.68.

There were approximately 21 minority students in the University of Washington law school class. Marquez was one of 12 students in his class who earned a cumulative grade average of less than 68 for the first year. All 12 were special admittees. Based on established procedures and guidelines the law school's Faculty Committee on Admissions reviewed the record of all 12 students. Each of them was evaluated individually based on certain established standards and guidelines which included the student's prospect for improving performance, the overall pattern and level of grades, number of classes dropped, grades below 60 and many other personal factors. As a result of such evaluation, eight of the 12 students, based on the Committee's recommendation, were allowed to remain in school conditioned on their improving their cumulative grade average to 68 by the end of the second year. The remaining four students, including Marquez, were terminated. However, the law school dean

thereafter sent a request to all faculty members proposing that these four terminated students be readmitted and thereby extend the law school's effort to administer a viable minority legal education program. Based on such recommendation, a special faculty meeting was held and the dean's proposal accepted.

These four students, including Marquez, were subject to different conditions on their remaining in school as compared to the other eight students who had likewise failed to receive passing grades. The four were required to repeat all classes in which they had not received a 68 average or better grade. However, they were extended the additional concession to drop the lower grade for any course which was repeated rather than counting it in the overall average. In comparison, the other eight students were not allowed to expunge any of the lower grades they had earned during their first year.

As a result thereof, Marquez' grade average, at the end of the second year, including three replacement grades for the ones dropped when he entered first year classes, was 67.725. Petitioner Marquez was one of four students with grades of 68 or below, and all of said students were members of a minority group and special admittees.

The law school faculty had previously voted to have the dean decide on further termination of students with failing grades, and guidelines for this procedure were established. Consequently, Marquez and two other students with failing grades were terminated by the assistant dean after conferring with the dean and soliciting comments from each student and faculty member. The fourth student with a grade point average of 67.13 was allowed to remain since he was one of the eight students at the end of the first year who was *not* allowed to drop any low

grades in calculating cumulative grade averages and he was therefore in a different position than Marquez.

In making the decision to terminate Marquez the school considered the overall pattern of Marquez' grades, his motivation and other particular circumstances which Marquez and faculty members had presented. It was the dean's conclusion that Marquez did not have a reasonable chance of meeting the normal graduating requirements of the law school. Among the facts considered by the dean were the scoring achieved by Marquez in retaking three first year classes in which he had originally scored less than 60 and scored no higher than 65 on his second attempt.

Marquez and his attorney were advised of their right to petition for faculty review of the dean's decision, but did not take advantage of that opportunity. In May of 1975 Marquez filed a petition for readmisson at which time he had enrolled in some law school classes for the summer quarter of 1975 as a non-matriculated student. He failed three of the four summer courses and again was denied readmission. The faculty in the fall of 1975 voted 25 to zero with three abstentions to deny Marquez's petition for readmission. Marquez was present at the meeting and made a presentation on his own behalf. Thereafter petitioner Marquez filed his complaint in this action.

REASONS WHY THE WRIT SHOULD BE DENIED

1. *Introduction.*

The jurisdiction of the Supreme Court to review decisions of the state courts is codified in 28 USC § 1257, which reads in pertinent part as follows:

> Final judgments or decrees rendered by the highest court of a state in which a decision could be had, may be reviewed by the Supreme Court as follows:
>
> . . .
>
> 3. By writ of certiorari, where the validity of a treaty or statute of the United States is drawn in question or where the validity of state statute is drawn in question on the ground of its being repugnant to the Constitution, treaties or laws of the United States, or where any title, right, privilege or immunity is specially set up or claimed under the Constitution, treaties or statutes of, or commission held or authority exercised under the United States.

2. *Issues 3 and 4 of Petition are not federal questions.*

The only grounds on which petitioner Marquez can seek jurisdiction of the court in this matter is by a claim that he has at issue in this suit some title, right, privilege or immunity specially set or claimed under the Constitution of the United States. None of the other grounds outlined in 28 USC § 1257 are in any way applicable to the case at bar.

In reviewing the Questions Presented at p. 1 of Marquez' Petition, it is arguable that his questions Nos. 1 and 2 raise such issues. However, it is clear that his questions Nos. 3 and 4 regarding breach of contract and the appropriate use of summary judgment raise no such claims, but are rather issues of state law.

This court has long held that if it assumes jurisdiction of a case arising in state court because of a federal question it will not proceed further in considering separate questions of state law. *Murdock v. Memphis*, 20 Wall. 590 (1874). Thus, those two questions are inappropriately asserted as issues for this court to review and are no jurisdictional base for a review by this Court.

3. *No important legal issues or substantial or unsettled questions arising under the Constitution exist in Issues 1 and 2 of the Petition nor is there any conflict between the decision of the state court and that of any U.S. Court of Appeals or this Court.*

Even if petitioner has raised a federal question in Nos. 1 and 2 of the Questions Presented to the court in his petition, the court should deny the writ requested because there is no impotant legal issue involved in this case nor are there substantial, unsettled federal questions arising under the Constitution.

Petitioner cites no case indicating there is any important legal issue in the case at bar or any substantial or unsettled federal question arising under the Constitution. In fact, the law is clear in this area. This court has established that an institution's discretionary academic decisions will not be interfered with by the court unless they are shown to be arbitrary and capricious or illegally discriminatory. See, *Board of Curators v. Horowitz*, 435 U.S. 78, 55 L.Ed.2d 124, 98 S.Ct. 948 (1978). Petitioner has made no such showing. This court has also upheld the type of affirmative action program under which Marquez was admitted to the University's law school. *University of California Regents v. Bakke*, 438 U.S. 265, 57 L.Ed.2d 750, 98 S.Ct. 2733 (1978). Therefore, further review of such a program is unnecessary by this court.

In addition, petitioner has failed to cite any case indicating a conflict between the state court of appeals' decision and any U.S. Supreme Court or U.S. Court of Appeals decision. There is, in fact, no such conflict regarding the issues raised in Nos. 1 and 2 of petitioner's Questions Presented.

CONCLUSION

For these reasons, the petition for a writ of certiorari should be denied.

Respectfully submitted,

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